

For preliminary hearing purposes, the administrative law judge found that claimant and his wife are co-owners of the respondent company and, as the employer, have authorized medical treatment from Topeka physician, Michael McCoy. The insurance carrier requests the Appeals Board to review that order.

The issues before the Appeals Board are:

(1) Whether the respondent can properly designate the authorized treating physician over the objection of the insurance carrier.

(2) Whether the Appeals Board has jurisdiction to review this matter as it pertains to the authorization of a treating physician and payment of drug prescription expense.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board, for purposes of preliminary hearing, finds:

The Appeals Board does not have jurisdiction to review this preliminary hearing matter. Therefore, the Order of the administrative law judge remains in full force and effect.

The jurisdiction of the Appeals Board to review a preliminary hearing order is statutorily created by K.S.A. 44-534a and K.S.A. 44-551. K.S.A. 44-534a enumerates four preliminary hearing issues that may be reviewed by the board: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice is given or claim timely made; and ( 4 ) whether certain defenses apply.

As the issues pertaining to the selection of Dr. McCoy and payment of drug prescription expense do not fall within one of the enumerated issues set forth in K.S.A. 44-534a, the Appeals Board does not have jurisdiction pursuant to that statute.

K.S.A. 44-551 generally provides that the Appeals Board has jurisdiction to review a preliminary award when the administrative law judge has exceeded his or her jurisdiction in granting or denying the relief requested. An administrative law judge is specifically empowered by K.S.A. 44-534a to make a preliminary award of medical compensation. Therefore, the selection of Dr. McCoy as the authorized treating physician and the order to pay drug prescription expense is within the judge's scope of authority and jurisdiction. As a result, the Appeals Board does not have jurisdiction to review this matter pursuant to K.S.A. 44-551.

The insurance carrier has attempted to frame the issue pertaining to the selection of an authorized treating physician in the context of a request to change the authorized treating physician. However, change of physician was not the issue before the administrative law judge. The issue before the administrative law judge was whether the employer may designate the authorized treating physician when the proposed treatment is reasonable and necessary.

Regarding the issue pertaining to the payment of drug prescription expense, the issue is not whether accidental injury arose out of and in the course of employment as that is not disputed, but whether certain medical treatment is appropriate. Although the distinction may be difficult to discern in certain cases, the issues are distinguishable.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that it lacks jurisdiction to review this preliminary hearing matter and that the preliminary hearing

order of Administrative Law Judge James R. Ward dated May 23, 1994, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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